

## Congress Has the Authority to Do Right by D.C.

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More than 40 years ago, the Supreme Court declared that "no right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live." And yet, for more than 200 years the citizens of the District have been denied this right because they have no voting representation in Congress. To its credit, Congress is taking steps to begin correcting this longstanding injustice.

Specifically, the House Government Reform Committee has approved, and the House Judiciary Committee is considering, a bill that would give D.C. residents the right to full voting representation in the House. While conferring this right is surely the right thing to do, a legitimate question has been raised concerning Congress's authority to confer the right by simple legislation, rather than through constitutional amendment. We have carefully considered this question and believe for three reasons the bill is within Congress's authority: It is consistent with fundamental constitutional principles; it is consistent with the language of Congress's constitutional power; and it is consistent with the governing legal precedents.

First, interpretation of Congress's Article I legislative authority should always be guided by the fundamental principles upon which the nation and the Constitution were founded. Those principles include a commitment to a republican form of government and to the proposition that the laws enacted by the legislature should be based on the consent of the governed. There is nothing in our Constitution's history or its fundamental principles suggesting that the Framers intended to deny the precious right to vote to those who live in the capital of the great democracy they founded.

Second, Congress's specific power over the District of Columbia is one of the broadest of all its powers. In the words of the Constitution, "Congress shall have power . . . to exercise exclusive legislation in all cases whatsoever" over the District. In a 1984 case decided by the U.S. Court of Appeals for the D.C. Circuit, on which we both sat, Judge Abner Mikva noted that through this constitutional provision, the Framers gave Congress "a unique and sovereign power" over the District. In that same case, Judge (now Justice) Antonin Scalia wrote that the broad language of the power gave Congress "extraordinary and plenary" power over our nation's capital. And in another case, that same court held that this broad power gave Congress authority to "provide for the general welfare of citizens within the District of Columbia by any and every act of legislation which it may deem conducive to that end." It is hard to imagine a broader, more comprehensive congressional power than this; and it is also hard to imagine that the power could not be used to advance a fundamental principle of our Constitution -- that the right to vote should be extended to all citizens.

Finally, and equally important, the most analogous legal precedent addressing Congress's authority over the District confirms that Congress can act now to give the vote to D.C. residents. That precedent concerned the fact that Article III of the Constitution confers on federal courts jurisdiction to hear suits brought by citizens of different states against each other. But the Constitution did not give any such express jurisdiction over suits brought by or against citizens of the District of Columbia. As a result, Congress, relying on its broad Article I power over the District of Columbia, remedied that unfairness through legislation that extended the right to District residents. In a 1949 case called *National Mutual Insurance Co. v. Tidewater*, the Supreme Court upheld that extension and also said that Congress was entitled to great deference in its determination that it had power to address this inequity. The logic of this case applies here, and supports Congress's determination to give the right to vote for a representative to citizens of the District of Columbia, even though the Constitution itself gives that right only to citizens of states.

It is not a surprise that our Constitution, ratified in 1789, contemplated that the right to vote would be enjoyed only by "the people of the several states." After all, in 1789, all U.S. citizens lived in a state. It was not until 1801, when the process Congress authorized by statute in 1791 to create the District out of lands ceded by Virginia and Maryland was completed, that District residents lost their federal voting rights. There is no reason to believe the Framers intended for this to happen. And in any case they gave Congress power to address the problem. Congress has initiated a process to do so, and we urge it to quickly complete the task. As George Washington said in his first inaugural address, the American people are entrusted with "the preservation of the sacred fire of liberty and the destiny of the republican model of government." It is time to extend that model to the citizens of the nation's capital.

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